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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al., Case No. 12-12020-mg

Debtors.

- - - - -x

JENNIFER L. WILSON,

Plaintiff, Adv. No. 12-01936-mg

- against -

RESIDENTIAL CAPITAL, LLC, et al.,

Defendants.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

February 6, 2014

10:07 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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Doc# 6245 Motion for an Order Pursuant to Section 105 of the  
Bankruptcy Code and Rule 9019 of the Federal Rules of  
Bankruptcy Procedure Approving the Settlement Agreement Between  
Debtor GMAC Mortgage, LLC and Lynn McLaughlin-Montero and Lynn  
McLaughlin P.L.L.C..

Doc# 6278 Motion to Approve / Motion of the ResCap Liquidating  
Trust for an Order Pursuant to Bankruptcy Code Section 105(a)  
and Bankruptcy Rule 9019 Approving Settlement Agreement Between  
Debtor GMAC Mortgage, LLC and Bay-Valley Mortgage Group  
(related document(s)6277)

Doc# 6277 Motion to File Under Seal / Motion of the ResCap  
Liquidating Trust, Pursuant to 11 U.S.C. 107(b) and Fed. R.  
Bankr. P. 9018, to File Under Seal Redacted Portions of (I) The  
Motion for an Order Pursuant to Bankruptcy Code Section 105(a)  
and Bankruptcy Rule 9019 Approving Settlement Agreement Between  
Debtor GMAC Mortgage, LLC and Bay-Valley Mortgage Group, and  
(II) The Settlement Agreement

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Doc# 6280 Motion to Approve / Motion of the ResCap Liquidating Trust for an Order Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019 Approving Settlement Agreement Among Debtor Residential Funding Company, LLC and CTX Mortgage Company, Pulte Homes, Inc. and PulteGroup, Inc. (related document(s)6279)

Doc# 6279 Motion to File Under Seal / Motion of the ResCap Liquidating Trust, Pursuant to 11 U.S.C. 107(b) and Fed. R. Bankr. P. 9018, to File Under Seal Redacted Portions of (I) The Motion for an Order Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019 Approving Settlement Agreement Among Debtor Residential Funding Company, LLC and CTX Mortgage Company, Pulte Homes, Inc. and PulteGroup, Inc. and (II) The Settlement Agreement

(Doc. nos. 5105, 5897, 6090) Hearing RE: Response to Debtors' Objection to Proof of Claim No. 3835 Filed by Becky Spence.

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Adversary proceeding: 12-01936-mg Wilson v. Residential  
Capital, LLC et al  
(CC: Doc no. 1) Status Conference

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JENNIFER WILSON, PRO SE

1 P R O C E E D I N G S

2 THE COURT: All right. Please be seated. All right.

3 We're here in Residential Capital, number 12-12020.

4 Mr. Rosenbaum?

5 MR. ROSENBAUM: Good morning, Your Honor. Norm  
6 Rosenbaum, Morrison & Foerster, for the ResCap Liquidating  
7 Trust and the ResCap Borrower Claims Trust. Your Honor, with  
8 me today are my colleagues Adam Lewis and Dan Harris.

9 Your Honor, the first matter on the agenda is at page  
10 3, II.

11 THE COURT: Okay.

12 MR. ROSENBAUM: These are three uncontested motions to  
13 approve settlements.

14 Your Honor, the first matter is the motion for an  
15 order, pursuant to Section 105 of the Bankruptcy Code and  
16 Bankruptcy Rule 9019, to approve a settlement agreement between  
17 GMAC Mortgage and Lynn McLaughlin-Montero and Lynn McLaughlin  
18 P.L.L.C. Your Honor, it's supported by the declaration of  
19 Lauren Delehey, former chief litigation counsel for ResCap and  
20 now the current chief litigation counsel for the liquidating  
21 trust.

22 Your Honor, no objections were received. This relates  
23 to a pending adversary proceeding that GMAC commenced against a  
24 former broker regarding disputed commissions. And the  
25 settlement provides for a release of approximately 12,000

1 dollars to GMAC. And in turn, this will be submitted to the  
2 liquidating trust. Your Honor, no objections were received.  
3 If Your Honor has any other questions, I'm happy to address  
4 them.

5 THE COURT: No. Does anybody else wish to be heard  
6 with respect to the McLaughlin 9019 settlement?

7 All right. The McLaughlin -- the motion is at ECF  
8 docket 6245. It's supported by the Delehey declaration, which  
9 is Exhibit 2 to the motion. The Court has reviewed the motion  
10 and the attached papers. In applying the usual standard, as  
11 always, I applied the Second Circuit's In re Iridium Operating  
12 nonexclusive seven-factor test. Since no opposition has been  
13 filed, I won't go through each of the factors separately, other  
14 than to say I've considered each, to the extent applicable in  
15 the circumstances. The motion to approve the settlement is  
16 granted.

17 MR. ROSENBAUM: Thank you, Your Honor.

18 The next item is number 2 on page 3 under II. It's  
19 the motion of the ResCap Liquidating Trust for an order,  
20 pursuant to Bankruptcy Code Section 105 and Bankruptcy Rule  
21 9019, approving a settlement agreement between GMAC and  
22 Bay-Valley Mortgage Group. Your Honor, we also filed a related  
23 motion to seal partially redacted copies of the motion and the  
24 settlement agreement.

25 Your Honor, this motion -- and there's a companion



1 motion, the next item under it -- these are related. These  
2 relate to the settlement of correspondent repurchase demands.  
3 Your Honor, the Bay-Valley motion is supported by the  
4 declaration of Deanna Horst, who is currently the claims  
5 management professional for the liquidating trust, formerly for  
6 ResCap.

7 Your Honor, no objections were received to the motion  
8 itself. In terms of the motion to seal, we did preview it with  
9 the Office of the United States Trustee. If Your Honor  
10 recalls, there was an almost identical motion we filed to  
11 approve the settlement agreement with GVC, and over time,  
12 worked out language acceptable to the U.S. Trustee on the  
13 sealing. Your Honor, I'm happy to address the details of  
14 the --

15 THE COURT: All right. Does anybody wish to be heard  
16 either with respect to the 9019 motion or the 105 sealing  
17 motion?

18 All right. The sealing motion is at ECF 6277, and the  
19 motion to approve the settlement is at ECF 6278. As Mr.  
20 Rosenbaum indicated, the proposed order on the sealing motion  
21 is similar to the order that I did approve with respect to the  
22 GVC Mortgage settlement. That order is at ECF docket 6146. No  
23 objections have been filed.

24 Applying the usual standards for approval of settle --  
25 first, with respect to the sealing motion, in light of the

1 order, again, similar to the order in GVC, which was  
2 satisfactory to the U.S. Trustee, the sealing motion is  
3 granted.

4 In applying the usual standards for approval of the  
5 settlement, the seven-factor In re Iridium Operating test,  
6 applying those factors relevant to the circumstances, the  
7 motion is approved.

8 MR. ROSENBAUM: Thank you, Your Honor.

9 The next matter on the agenda, Your Honor, is at page  
10 4 under II, number 3. This is an almost identical motion of  
11 the ResCap Liquidating Trust for approval of a settlement  
12 agreement, under Bankruptcy Code Section 105 and Bankruptcy  
13 Rule 9019, approving a settlement agreement between debtor  
14 Residential Funding Company, LLC and CTX Mortgage Company,  
15 Pulte Homes, Inc. and PulteGroup, Inc.

16 Your Honor, this settlement resolves a pending  
17 litigation in Minnesota on mortgage loan and purchase demands.  
18 It's also supported by the declaration of Deanna Horst. We  
19 filed a similar companion motion to seal relevant portions of  
20 the agreement and the motion. No objections have been  
21 received, Your Honor.

22 THE COURT: Okay. Does anybody wish to be heard with  
23 respect to the settlement with Pulte?

24 I think I misspoke with the last motion. I referred  
25 to the sealing motion as 105; it's actually under the

1 Bankruptcy Code Section 107, as is this.

2 And again, so the motion to approve the settlement is  
3 at ECF 6280. It's supported by the declaration of Deanna  
4 Horst, which is Exhibit 2 to the motion. The sealing motion is  
5 at ECF 6279. Once again, the order proposed here is similar to  
6 the GVC, which, as I said before, is at ECF 6146.

7 The Court has reviewed the motion, the supporting  
8 documents, also reviewed the sealing motion. The sealing  
9 motion is granted, and the motion to approve the settlement is  
10 granted, applying the same standards for review of settlement  
11 agreements.

12 MR. ROSENBAUM: Thank you, Your Honor. I will now  
13 cede the podium to my colleague Adam Lewis. This is page 4,  
14 III. It's the claims objection to the claim filed by Becky  
15 Spence.

16 THE COURT: Okay.

17 MR. LEWIS: Good morning, Your Honor. Adam Lewis of  
18 Morrison & Foerster for the borrower's trust, on the Spence  
19 claim objection. I feel a little bit like the Maytag repair  
20 person, given how crowded this courtroom usually is.

21 THE COURT: I guess interest is dwindling.

22 MR. LEWIS: This concerns an objection to the proof of  
23 claim filed by Becky Spence. The proof of claim was filed --  
24 it's number 3 --

25 THE COURT: So let me ask, is Ms. Spence's lawyer on

1 the phone?

2 MR. LEWIS: Yeah, I think Ms. Krigel is.

3 MS. KRIGEL: Yes, Your Honor.

4 THE COURT: Okay.

5 MS. KRIGEL: Good morning. Erlene Krigel appears for  
6 Becky Spence.

7 THE COURT: Thank you very much, Ms. Krigel.

8 Go ahead.

9 MS. KRIGEL: Your Honor, I'm having a difficult time  
10 understanding debtors' counsel when he speaks.

11 THE COURT: All right. We'll try and get him to speak  
12 more directly into the microphone.

13 MS. KRIGEL: Thank you.

14 THE COURT: Let me know if you have any trouble again,  
15 okay?

16 MS. KRIGEL: Thank you.

17 THE COURT: Go ahead, Mr. Lewis.

18 MR. LEWIS: Thank you, Your Honor. The claim is  
19 number 3835, was filed on November 9th of 2012. The original  
20 objection is docket 5105. Ms. Spence filed her own response on  
21 the 18th of October, but I don't have a docket number for that  
22 one; it's a letter response. The reply that we filed is docket  
23 number 6090. There's now a supplemental response; that's 6330,  
24 and our supplemental reply which is 6395.

25 THE COURT: Let me just -- Ms. Spence's pro se

1 response was at ECF 5897.

2 MR. LEWIS: Thank you, Your Honor. So what I'd like  
3 to do, Your Honor, is do a little procedural history first on  
4 this objection, and then get into the merits of it a little bit  
5 more.

6 THE COURT: Sure.

7 MR. LEWIS: We filed the objection to the proof of  
8 claim on September 18th. Ms. Spence's response was a little  
9 late, and so the hearing that was originally scheduled for  
10 November was continued to December. And at the December  
11 hearing, on the eve of the December hearing, we were contacted  
12 by Ms. Krigel -- first by Ms. Spence, saying she was getting  
13 counsel, and then by Ms. Krigel, asking for a continuance,  
14 saying she was going to -- as Ms. Spence and the Court will  
15 recall, at the hearing in December, the Court set a new  
16 schedule and allowed Ms. Krigel to file a supplemental  
17 response. That was originally due in mid-January. She  
18 contacted us, and we agreed to give her a short extension so  
19 she could get some more information together. And the point,  
20 of course, of getting Ms. Krigel as counsel was to help Ms.  
21 Spence to put her objection -- her position into cognizable --  
22 legal and cognizable form and marshal her allegations and her  
23 facts and so on.

24 Where we are now is we now have an objection response  
25 that is mostly unsupported, unsworn statements. There's a

1 little bit of sworn material. It's sort of peripheral. It has  
2 to do with what homeowners were told about paying their rents  
3 and --

4 THE COURT: What tenants were told about paying their  
5 rent.

6 MR. LEWIS: Right -- tenants were told about paying  
7 their own rents, and what some people overhead at one end of a  
8 phone call, during the course of some discussions. But most of  
9 it is unsworn, including the key allegations by the debtor  
10 herself. And also, there are some notarized documents, but  
11 that's not sworn testimony; that's authentication of a  
12 signature. That's a totally different thing.

13 THE COURT: Mr. Lewis, the issue for me today is  
14 whether this presents a contested matter as to which some  
15 further proceedings are required. And there are a few issues  
16 as to which the Court has questions, based on the documents  
17 that have been put before me. But let me -- I'm going to allow  
18 you to make your argument and then I'll allow Ms. Krigel to  
19 make her argument, and then I'll, undoubtedly, have some  
20 comments about it.

21 MR. LEWIS: So now I'm going to go back to the merits,  
22 because that's clearly where you would like to go. And I think  
23 the first point here is the point we made originally, which was  
24 her original claim was based on the contention that we didn't  
25 possess the notes when we foreclosed, and the foreclosures were

1 therefore void.

2 THE COURT: They seemed to have dropped that issue.

3 MR. LEWIS: Yeah, totally. And in fact, they seem to  
4 have gone to a completely different set of issues and claims.

5 THE COURT: Well, I think one of the things that I've  
6 been mulling is -- and you raise this issue that this is an  
7 improper proposed amendment of a claim after the bar date. And  
8 I think the issue for the Court is whether the presentation is  
9 such, and the facts and circumstances are such that the Court  
10 would consider the additional allegations as part of the  
11 original claim or as an amended claim.

12 MR. LEWIS: I understand, Your Honor.

13 THE COURT: So what I want to do for today -- I  
14 understand your position that, essentially, they've changed the  
15 claim and it's a late-filed claim and it shouldn't be  
16 considered. But for purposes of the argument today, what I  
17 would ask you to do -- and I'm aware of all of those arguments,  
18 Mr. Lewis, and I haven't made up my mind about it, okay. But I  
19 want you to deal with them on the merits.

20 MR. LEWIS: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. LEWIS: Before I do that, I would just want to add  
23 one point about the claim amendment thing.

24 THE COURT: Yes.

25 MR. LEWIS: The allegations that Ms. Spence later

1 raised are not allegations of facts that she wasn't aware of  
2 when she filed her proof of claim. Most of those concerned  
3 things that she personally contends she was involved in.

4 THE COURT: Look, I really am on top --

5 MR. LEWIS: Okay.

6 THE COURT: -- of the issues.

7 MR. LEWIS: All right.

8 THE COURT: Okay?

9 MR. LEWIS: Okay.

10 THE COURT: And what your time would be better  
11 spent --

12 MR. LEWIS: Very well, Your Honor.

13 THE COURT: -- addressing -- and I'm not saying  
14 whether I'm going to permit, essentially, an amendment of the  
15 claim to raise new arguments that weren't raised before or not.  
16 I'm not ruling on that now. But I want you to address the  
17 merits.

18 MR. LEWIS: Okay. Very well, Your Honor. Well, the  
19 merits are the following. The first theory that Ms. Spence  
20 uses now is that the foreclosures were void because we  
21 cancelled the prior sales, and thereafter, we didn't properly  
22 renotice them as required --

23 THE COURT: Foreclosure sales --

24 MR. LEWIS: Yeah.

25 THE COURT: -- not fire sales.



1 MR. LEWIS: Right; foreclosure sales. We thereafter  
2 didn't properly renotice them after they were cancelled. The  
3 fact is -- and it appears from the evidence that she submits,  
4 if you look at her own -- she submits the grant deeds, or the  
5 trustee's deeds, and they say "continued from".

6 THE COURT: Four of the six --

7 MR. LEWIS: Right.

8 THE COURT: -- say "continued".

9 MR. LEWIS: Right.

10 THE COURT: But you haven't dispute -- as I understand  
11 Missouri state law, you can only continue the sale for seven  
12 days, and all six of the sales didn't take place within the  
13 seven days; I think they were twenty-one days. Okay. So  
14 even -- so for two -- you didn't address whether all six were  
15 continued. You point to the deeds that Ms. Krigel attached  
16 that shows -- that recite that four of the six were continued,  
17 but you didn't address whether the actual sales occurred within  
18 the permitted time period under Missouri law. And you can  
19 address this, if you will, but as I understand Missouri law,  
20 you can continue it once, for no more than seven days. And  
21 none of the six foreclosure sales occurred within seven days of  
22 the original notice, am I correct in that?

23 MR. LEWIS: Yes, Your Honor. The answer to that  
24 question is the Maynard case which says that, while that may be  
25 true, it's not ground to void a sale.

1 THE COURT: Well, so let's focus on that for a minute,  
2 because I've thought about that issue. I understand your  
3 argument of Maynard, and I'm going to ask Ms. Krigel whether  
4 she has any contrary authority. But it may be that you're  
5 correct that the sales can't be voided, but that doesn't mean  
6 that Ms. Spence wouldn't have a valid damage claim, that the  
7 sales -- that whoever bought the property at the sale, the sale  
8 is a valid sale. It can't be set aside; it's not void. But  
9 that doesn't answer the question of whether Missouri would  
10 recognize a damages claim for a sale that was not conducted in  
11 accordance with Missouri law. So you have the Maynard case  
12 that basically says the sale's not void.

13 What about on the damage issue?

14 MR. LEWIS: Well, Your Honor, if the sale is not void  
15 because the procedure we used, if irregular, is acceptable,  
16 because it meets the underlying --

17 THE COURT: Well, don't tell me it's acceptable. What  
18 it is is -- first off, I take it you acknowledge that all six  
19 sales -- that none of those six sales were conducted consistent  
20 with Missouri law.

21 MR. LEWIS: Consistent with the statute --

22 THE COURT: Yes.

23 MR. LEWIS: But I think consistent with Missouri law  
24 under Maynard.

25 THE COURT: Yeah --

1 MR. LEWIS: I want to --

2 THE COURT: I mean, you could continue the sale for  
3 not more than seven days; otherwise, you'd have to renotice it.  
4 Four of the six deeds recite that the sales were continued.  
5 Two of them I don't know. So I think there's -- there's no  
6 evidence as to the other two as to whether they were continued  
7 or cancelled. You didn't put in any evidence on it.

8 But it doesn't answer my question about -- so the  
9 Maynard supports your argument -- and we'll see whether Ms.  
10 Krigel has anything to the contrary -- that the sales are not  
11 void. But it doesn't answer the question whether Ms. Spence  
12 has a damage -- I don't know what her damages would be; it's a  
13 different issue, but --

14 MR. LEWIS: I think it does answer that question.

15 THE COURT: Well, why does it answer --

16 MR. LEWIS: If you look at the reasoning of Maynard,  
17 the reasoning of Maynard is there's nothing wrong here in the  
18 end because persons who are concerned could show up at the  
19 original date and hear a new date. They are in a position to  
20 protect themselves. Evidently, Ms. --

21 THE COURT: Well, let me ask you this, Mr. Lewis. If  
22 you had to renotice the sales, how much notice was required?

23 MR. LEWIS: To renotice the sales?

24 THE COURT: Yes.

25 MR. LEWIS: Well, I think that there's a minimum -- I

1 don't know the minimum amount of time, under Missouri law, for  
2 an initial sale, so I'm not -- I don't really have the answer  
3 there.

4 THE COURT: Okay.

5 MR. LEWIS: But once again, I mean -- and California's  
6 not Missouri, but in California, for example --

7 THE COURT: Well, let's talk about Missouri, not  
8 California. Go --

9 MS. KRIGEL: Your Honor, if I might --

10 THE COURT: No, Ms. Krigel, why don't you -- you'll  
11 get your chance, okay?

12 MS. KRIGEL: All right.

13 THE COURT: Go ahead.

14 MR. LEWIS: Your Honor, I think the point is the owner  
15 has the ability to protect herself against a surprise sale by  
16 showing up at a sale of the property that she contends she's  
17 concerned with. And that's the whole rationale behind Maynard.  
18 And I think what it comes down to is a kind of assumption of  
19 the risk issue here. You could show up -- if you really cared  
20 about the sale, you could show up. Maybe the sale would go  
21 through and that would be the end of it for you. But on the  
22 other hand, maybe it would be continued for some reason. Maybe  
23 you could persuade the secured creditor to continue it, for  
24 some reason, and you would be there to know what the new date  
25 is. So you are in a position to protect yourself; you're

1 perfectly capable of doing that. And the policy underlying the  
2 Maynard decision, I think, applies equally to whether --

3 THE COURT: Yeah, but --

4 MR. LEWIS: -- there's a damage claim.

5 THE COURT: But Maynard said that its holding "did not  
6 preclude the possibility that under an appropriate evidentiary  
7 setting the violation of that section could nullify and void a  
8 foreclosure sale". That's at page 391. It's 952 S.W.2d at 391  
9 is where I quoted from. But it doesn't say what kind of  
10 evidence is required.

11 So Maynard did not absolutely preclude a borrower from  
12 seeking to void the sale. I don't know what evidence they had  
13 in mind, because they didn't say. But what you're asking me to  
14 determine, as a matter of law, that Maynard precludes Spence  
15 from asserting a claim. And while I might -- while, given the  
16 passage of time, I think it would be unlikely -- I'm not saying  
17 it couldn't happen -- that the sale would be voided. I don't  
18 know who owned -- I don't know how many times the property's  
19 been sold since then, who owns it now, whether a good-faith  
20 purchaser, et cetera. But I don't see it precluding the  
21 possibility of a damage remedy.

22 You're asking me to expunge the Spence claim. And I  
23 have no hesitancy about expunging claims, if the position of  
24 the debtors is well taken. But as to this aspect of it -- when  
25 I say "this aspect", the portion of what's been raised now that

1 Homecomings failed properly to publish the foreclosure sales;  
2 you acknowledge they didn't, right? You've acknowledged  
3 that --

4 MR. LEWIS: After the initial --

5 THE COURT: -- the sales were noticed, and we know at  
6 least four of the six were continued; I don't know as to the  
7 other two. But a continuance is not permissible under the  
8 statute for more than seven days, and these sales didn't occur  
9 within seven days.

10 MR. LEWIS: Well, Your Honor, I would urge that  
11 there's no essential difference, given the policy that's  
12 enunciated --

13 THE COURT: It's interesting, you argued Maynard, but  
14 I had to dig -- you didn't come out and say, Maynard says that  
15 a sale that didn't comply is void. You didn't point out in  
16 your argument that, by the way, we continued it, but it didn't  
17 happen within the seven days. One had to dig to see these  
18 sales didn't happen in the seven days.

19 MR. LEWIS: Well, I guess, Your Honor, we didn't say  
20 that because we didn't consider it to be a relevant fact, given  
21 our reading of Maynard.

22 THE COURT: I did.

23 MR. LEWIS: I gather, Your Honor.

24 THE COURT: I did.

25 MR. LEWIS: But I would urge that, given the rationale

1 of Maynard, the essential facts here are the same. There might  
2 be some other set of facts, as Maynard speculates --

3 THE COURT: Are there any other -- did you find any  
4 other cases other than Maynard?

5 MR. LEWIS: No, Your Honor, no cases pointing to an  
6 alternative outcome on these kinds of facts. And I don't see  
7 any essential --

8 THE COURT: Well, you say " no cases pointing to an  
9 alternative outcome", but the Court in Maynard specifically  
10 left open -- didn't preclude the possibility that, under an  
11 appropriate evidentiary setting, the violation of this  
12 statutory section could nullify and void a foreclosure sale. I  
13 don't know what that means.

14 MR. LEWIS: Yeah, under a different set of facts is --  
15 what I take it to mean, they're saying different circumstances  
16 might result in a different outcome. But in this case --

17 THE COURT: That's what says to me that I've got to  
18 have an evidentiary hearing to determine all of the facts  
19 before I can make a determination.

20 MR. LEWIS: Well, Your Honor, I respectfully disagree.

21 THE COURT: All right. All right.

22 MR. LEWIS: But there it is. I mean, I think  
23 Maynard --

24 THE COURT: So that's -- I have to say that you've  
25 gone to the main point that I'm troubled by, this issue about

1 the sales. You also argue that the claimant has failed to  
2 basically establish damages on a breach of contract claim.

3 MR. LEWIS: That's right, Your Honor.

4 THE COURT: And I guess my reaction there, Mr. Lewis,  
5 and you can address it, is that the issue of the quantum of  
6 damages can't be resolved based on a claim objection. And the  
7 issue for me is whether the claimant has stated a claim for  
8 breach of contract, in which case she's entitled to an  
9 opportunity to prove her damages.

10 MR. LEWIS: Well, I guess our argument there, Your  
11 Honor, is she doesn't present any evidence or any argument that  
12 she had any alternatives that she could have pursued. The fact  
13 is Ms. Spence was in default on a number of properties. She  
14 didn't have the money to pay the defaults. And that's not  
15 really in dispute; that's why there were foreclosures on the  
16 way.

17 THE COURT: Well, she says she was denied a  
18 1.8-million-dollar loan that would have allowed her to  
19 refinance some of the properties, and another 35-million-dollar  
20 loan for beginning construction on a hotel. So she suffered  
21 economic losses due to the raising of certain of her properties  
22 in anticipation of receiving loans for constructing the hotel.  
23 I mean, in her supplemental resp -- you said she didn't  
24 establish any damages, and in the supplemental response they  
25 come back and -- it's not proof, but they've raised a number of



1 arguments about how she was damaged. Whether they're valid or  
2 not, that's different; I'm not making any comment about it  
3 whatsoever. But --

4 MR. LEWIS: Your Honor, if you look at that one, for  
5 example, that letter --

6 THE COURT: Yes.

7 MR. LEWIS: -- which, again, is unsworn; I mean, it's  
8 just a letter.

9 THE COURT: Okay.

10 MR. LEWIS: And you're supposed to present conflicting  
11 evidence, especially having gotten counsel at these  
12 proceedings; that's the whole point is there's conflict -- it's  
13 almost -- the analogy I would draw, I suppose, is something  
14 like a summary judgment. If there's a genuine --

15 MS. KRIGEL: I'm sorry, Your Honor. I cannot  
16 understand --

17 MR. LEWIS: I'm sorry.

18 MS. KRIGEL: -- debtors' counsel.

19 THE COURT: Okay.

20 MR. LEWIS: It's a little like a summary judgment,  
21 it's whether there's a genuine dispute of fact that needs to be  
22 tried. There isn't a genuine dispute of fact here because, on  
23 the Spence's side, there are very few evidentiary facts before  
24 the Court. There's a lot of statements, but very few  
25 evidentiary facts, including on this issue.

1           And if you look at that letter, the letter talks about  
2 the -- the loan fell through because of derogatory information.  
3 Ms. Spence was in default; of course there was derogatory  
4 information. She was in default at that point. And that was  
5 not our fault. It's not because of anything bad we did. She  
6 was in default, so she didn't get her loan. That's not our  
7 fault. It's her fault.

8           THE COURT: Okay.

9           MR. LEWIS: I'm not blaming her for it, but that's a  
10 fact. And so there's no evidence that the derogatory  
11 information had anything to do with what we did that she said  
12 we did wrong. The derogatory information we know about, if  
13 there was any at that point, would be she was in default and we  
14 would report that to a credit agency. That's how that works.  
15 So again, I don't see any real issue of fact that the response  
16 has created.

17           THE COURT: Well, I guess maybe your position is  
18 you're privileged in reporting -- the debtors were  
19 privileged --

20           MR. LEWIS: Yeah.

21           THE COURT: -- in reporting the default to a credit  
22 agency.

23           MR. LEWIS: And there's no suggestion that what we  
24 reported was inaccurate.

25           THE COURT: All right.

1 MR. LEWIS: And once again, Ms. Spence, with Ms.  
2 Krigel's help on this round, had the option to develop that  
3 evidence --

4 THE COURT: Well --

5 MR. LEWIS: -- but didn't.

6 THE COURT: All right. Any other arguments?

7 MR. LEWIS: Only if you have any other questions, Your  
8 Honor. I mean, I think that's --

9 THE COURT: Let me look back at my notes, okay?

10 MR. LEWIS: Sure.

11 THE COURT: So on the issue of the notification of the  
12 tenants to stop paying Ms. Spence the rent, is there any  
13 Missouri case law as to whether the notice has to be in writing  
14 or not?

15 MR. LEWIS: Not that I'm aware of.

16 THE COURT: Okay. And what evidence do I have that  
17 the tenants were notified orally -- were they -- because Ms.  
18 Krigel raised the issue about, well, were they told who to pay  
19 it to. Were tenants -- did tenants simply stop paying rent, or  
20 did they pay the rent to Homecomings? What happened? What are  
21 the facts?

22 MR. LEWIS: Well --

23 THE COURT: And I know I don't have an evidentiary  
24 record, but I'd like to --

25 MR. LEWIS: And I'm not --

1 THE COURT: -- know what --

2 MR. LEWIS: -- sure that I --

3 THE COURT: I want you to represent what you can --

4 MR. LEWIS: Yeah.

5 THE COURT: -- about what --

6 MR. LEWIS: Understood.

7 THE COURT: -- what the evidence would show.

8 MR. LEWIS: And I'm not sure that I have the evidence  
9 now about what actually happened to the money, whether they  
10 just held it or they gave it to us. But I'd urge the Court  
11 that that's not relevant, because the key issue, under Missouri  
12 law, is whether the lender exercises control, and we did that.

13 THE COURT: Well, the issue is --

14 MR. LEWIS: Whether we told them --

15 THE COURT: -- do you exercise control by orally  
16 telling your tenants to stop paying Spence. I don't know. I  
17 mean, you don't have any cases; they don't have any cases.

18 MR. LEWIS: Well, Your Honor, they're the ones who are  
19 making the point, and I think it's incumbent on them to have  
20 cases that say that what we did isn't appropriate.

21 THE COURT: They did say that. And neither side has  
22 any cases. You don't have any cases that say they're wrong,  
23 and they don't have any cases that say that they're right. I  
24 don't know what the law is, okay? I understand about the issue  
25 of possession, all right? I don't know how I'm going to come

1 out on this point, but that's why I want to know -- I'm going  
2 to ask Ms. Krigel does she have any cases. I mean, you didn't  
3 have any cases. I didn't see any in her submission.

4 MR. LEWIS: There's one further point on this issue,  
5 Your Honor, and that's -- we also pointed out that, by Ms.  
6 Spence's own account, the money that she would have gotten in  
7 rent, she would have used to maintain the properties, not to  
8 solve her other financial problems. Well, if anybody was hurt  
9 by that, it was Homecomings, which foreclosed on properties  
10 that might not have been worth what they otherwise would have  
11 been if they'd been maintained, if maintenance was an issue at  
12 all. So there's no damage, even if there's a wrong. And under  
13 Missouri law, as we indicated with case law, you have to have  
14 damages to have a claim. And there are no damages here. It's  
15 on the face of Ms. Spence's own position that she has no  
16 damages.

17 THE COURT: Okay. Let me ask you one other question.

18 MR. LEWIS: Yes, Your Honor.

19 THE COURT: In paragraph 14 of the supplemental  
20 response, Spence asserts that Homecomings, "both over the phone  
21 and in writing", although she didn't attach the writing,  
22 "represented that it would cancel the second foreclosure  
23 sales". And what's your position on that?

24 MR. LEWIS: We have no evidence that that ever  
25 happened. In fact, the only evidence we have is that, at least

1 in four cases, and probably in six, because that's probably how  
2 the other two trustee's deeds would have read, they were  
3 continued.

4 THE COURT: Well, that doesn't -- with all due  
5 respect, Mr. Lewis, that doesn't address the issue of whether  
6 representation was made to Spence by Homecomings that the  
7 second sale would be cancelled or adjourned or what have you.  
8 What they put in are four of six deeds, the four deeds saying  
9 it was continued. Interesting, but it wasn't -- the sales  
10 didn't occur consistent with the statute within seven days of  
11 the original sale date. At least as to the four, it would  
12 appear that there's evidence that the first sale wasn't  
13 cancelled; it was continued. It just seems to have gotten  
14 continued for longer than the statute permitted. But that  
15 doesn't address the issue of -- I mean, has somebody gone to  
16 the servicing notes to see whether there is anything in the  
17 servicing notes that addresses cancellation, continuation of  
18 the sales, et cetera.

19 MR. LEWIS: To my knowledge, there's nothing in the  
20 servicing notes that --

21 THE COURT: When you say there's nothing -- have you  
22 looked?

23 MR. LEWIS: I have asked that it be looked for, and  
24 I've been told that there's no indication one way or the other.

25 But ask yourself, Your Honor, first of all, if she's

1 asking for some accommodation for trying to find some money,  
2 why would we cancel the sales instead of continue them? I  
3 mean, it makes no sense to do that.

4 THE COURT: I don't know.

5 MR. LEWIS: And secondly, Your Honor, once again, we  
6 have no evidence --

7 THE COURT: I'll accept that as to four of them --  
8 because the only evidence before me are the deeds -- that four  
9 of them were continued. The problem is I don't know whether  
10 there's anything in the servicing notes about, all right, we  
11 continued the sales, we'll reschedule it for such and such  
12 date. Is this issue addressed in the servicing notes?

13 MR. LEWIS: Not that I'm aware of, Your Honor.

14 THE COURT: And you specifically inquired, and that's  
15 what you've been told?

16 MR. LEWIS: I have.

17 THE COURT: Okay. All right. Let me hear from Ms.  
18 Krigel.

19 MR. LEWIS: Thank you, Your Honor.

20 THE COURT: Go ahead, Ms. Krigel.

21 MS. KRIGEL: Thank you, Your Honor. Well, I would  
22 like to first address the Maynard case, because I think that in  
23 looking at the Maynard case, the facts in that case were that  
24 the lender had continued a sale for seven days but then  
25 continued it again for a second seven days. And the Court in

1 that case held that it wasn't a problem because the fact that  
2 they continued it for two seven-day extensions was not enough  
3 to feel that it violated the spirit of the statute.

4 In our case, we're not talking about just one seven  
5 days and then another seven days. If they really continued it,  
6 they continued it for much more than seven days, which, in  
7 effect, was not a continuance but a cancellation, because the  
8 statute didn't provide for that type of a continuance.

9 The Maynard case, at 392, does recognize that a  
10 borrower may have a claim for damages. And Maynard cites two  
11 other cases. One is Graham v. Oliver at 659 S.W. 601. It's a  
12 1983 Missouri Court of Appeals decision. And in that decision,  
13 the Court held that there are some procedural requirements so  
14 fundamental to a foreclosure sale that failure to observe them  
15 must be held to cause a sale and a resulting trustee's deed to  
16 be void. And the Graham court seems to cite the failure to  
17 publish as one of those failures. We believe that even if four  
18 of the six deeds recited that it was a continuance, it couldn't  
19 have been a continuance because, again, it was for much more  
20 than the seven days. The second case that Maynard cited is  
21 Zdazinsky, it's Z-D-A-Z-I-N-S-K-Y v. Four Seasons Lakesides,  
22 Inc., 901 S.W.2d 224, 225. It's a 1995 Missouri Court of  
23 Appeals decision. It also stood for the same proposition.

24 So we believe there's ample case law in Missouri to  
25 find that while exactly seven days, there may be some leeway



1 there, based on what Maynard had to say, it doesn't give free  
2 reign to the lender to just select whatever continuance it  
3 wants. And so we feel that if they believed it was a  
4 continuance, it wasn't; it couldn't have been, because it was  
5 for much more than what the statute allowed.

6 I also want to point out, Your Honor, that as part of  
7 Ms. Spence's pro se initial response, she provided in her  
8 response copies of reinstatement quotes that she had received  
9 from Homecomings, providing her with what amounts needed to be  
10 paid in order to bring these loans current. And each  
11 reinstatement quote gave her a date through which reinstatement  
12 would be valid. And the dates on most of those quotes was June  
13 10th, 2008. The sale dates on most of the properties was June  
14 11th, 2008. So in my --

15 THE COURT: So she didn't --

16 MS. KRIGEL: -- in my mind, Your Hon --

17 THE COURT: Ms. Krigel, she didn't cure by June 10th,  
18 correct?

19 MS. KRIGEL: That is correct.

20 THE COURT: So the sales --

21 MS. KRIGEL: But in my mind, Your Honor, they would  
22 have cancelled the sales because they gave her a new  
23 opportunity to try and bring the loans current.

24 THE COURT: She didn't do it, though.

25 MS. KRIGEL: That is correct, she did not do it.

1 THE COURT: So it's not like they jumped the gun and  
2 sold the property before -- they gave her a chance to cure.

3 MS. KRIGEL: Right, but they --

4 THE COURT: They told her that --

5 MS. KRIGEL: But she didn't have notice of the new  
6 foreclosure dates because they did not provide that  
7 notification. And in the Zdazinsky case, it says that if the  
8 lender gives the borrower a belief that the sale will be  
9 delayed or cancelled, that the lender has to give the borrower  
10 actual notice of the sale.

11 So the fact that they gave her some accommodation and  
12 then they went ahead and foreclosed, I believe, based on  
13 Missouri case law, they needed to have given her her proper  
14 notice of the subsequent foreclosure sale. And by just merely  
15 saying we continued it isn't enough. They didn't give her any  
16 additional notice. Their own documents support that. Their  
17 own documents say the only notice we gave was for the original  
18 sale date.

19 THE COURT: But, Ms. Krigel --

20 MS. KRIGEL: So --

21 THE COURT: -- let me ask you. I asked Mr. Lewis this  
22 question. In paragraph 14 of your supplemental response --

23 MS. KRIGEL: Yes, sir.

24 THE COURT: -- you assert that Homecomings, both over  
25 the phone and in writing, represented it would cancel the

1 second foreclosure sales. Where's the writing? You didn't  
2 attach it. What is the writing? Where is it?

3 MS. KRIGEL: Well, at this moment, Your Honor, I'm not  
4 sure if I recall where she told me that the delay -- I know  
5 that it was orally given to her. I can't say other than I  
6 understood it to be in these communications, the reinstatement  
7 quote communica --

8 THE COURT: Yeah, but your pleading said it was in  
9 writing.

10 MS. KRIGEL: Right.

11 THE COURT: It said orally and in writing, but you  
12 didn't attach it, and so I want to know -- I want to see the  
13 writing.

14 MS. KRIGEL: Okay. All right. Well, Your Honor, I  
15 apologize that I don't have that information in front of me at  
16 the moment.

17 THE COURT: Okay.

18 MS. KRIGEL: I don't know that.

19 THE COURT: Okay.

20 MS. KRIGEL: I would also like to address one other  
21 point that was made -- one moment -- that has to do with the  
22 Court wanting to know our position on the assignment of rents  
23 and the fact that it was an oral communication but we believe  
24 to be not sufficient to qualify. And we had cited a Northwest  
25 Commons case, 136 B.R., 215, that's an Eastern District of

1 Missouri 1991 decision. And in that case, Your Honor, I think  
2 I cited in my brief that that case stood for the proposition  
3 that the lender must give the tenants a written notice of its  
4 demand for the rent, and the notice must provide the tenant  
5 with enough information for the tenant to know who to pay and  
6 where to send the payment. And we believe that, again, while  
7 the representative for the lender told the tenants not to pay  
8 the rent, they didn't tell the tenants who to pay or where to  
9 pay it. And we believe that that created two problems, one of  
10 which is with not knowing who to pay or where to pay it, they  
11 didn't pay anyone. And if they had either paid Ms. Spence or  
12 paid the lender, it would have at least reduced what arrearage  
13 she was accruing, as well as potentially helping her to try and  
14 bring enough money to the table to reinstate the loan.

15 THE COURT: Ms. Krigel, I read Northwest Commons  
16 differently than you've just described. It required the lender  
17 to give notice "that it is activating its rights under an  
18 assignment of rent clause". But the lender in Northwest  
19 Commons did notify the tenants by mail of its intent to  
20 exercise its rights under an assignment of rents clause. It  
21 didn't seem to me that the Court announced a per se rule that  
22 notice must be given in written form. It was there. And --

23 MS. KRIGEL: Your Honor, I'm not complaining about the  
24 fact --

25 THE COURT: Well, but you're relying on Northwest

1 Commons --

2 MS. KRIGEL: -- that the notice wasn't in writing.

3 THE COURT: Hold it. Stop. You argued to me that  
4 Northwest Commons holds that the notice has to be in writing,  
5 and I don't read the case that way. It was in writing there.  
6 There were other problems about it. But I didn't see the Court  
7 saying it had to be in writing. You think it does?

8 MS. KRIGEL: No, Your Honor. I think that our  
9 complaint is that the notice was insufficient because it merely  
10 told them not to pay; it didn't tell them who to pay and where  
11 to pay it. And we believe that, based on this decision, that  
12 that was what caused the notice to be defective.

13 THE COURT: Can you tell me -- are you able to  
14 represent facts as to what the -- did all the tenants -- did  
15 they pay the rent to the mortgagee? Did they stop paying the  
16 rent at all? Can you represent to me what the facts would  
17 show?

18 MS. KRIGEL: I believe they stopped paying the rents  
19 completely. And I believe that Ms. Spence, in her pro se  
20 response, did attach -- I think there were three parts in her  
21 response that she sent me. And in the second part there was a  
22 letter from a tenant, a former tenant that indicated that they  
23 did not know where to send the payment or to who.

24 THE COURT: Okay. Anything else you want to argue,  
25 Ms. Krigel?

1 MS. KRIGEL: I'm sorry?

2 THE COURT: Anything else you wish to argue?

3 MS. KRIGEL: Well, Your Honor, I didn't know if you  
4 wanted me to address the issue of the debtors' complaint that  
5 this was an improper amendment of the claim after the bar date,  
6 because I am prepared to speak on that if the Court --

7 THE COURT: I cut Mr. Lewis off on speaking -- I think  
8 I have that clearly in mind. I'm not ruling now; I'm taking  
9 the whole thing under submission, but --

10 MS. KRIGEL: All right.

11 THE COURT: Because if I let you argue it, then I've  
12 got to let Mr. Lewis argue it as well, and I'm not sure that  
13 we're going to accomplish a whole lot by diving in there. I  
14 understand the arguments about --

15 MS. KRIGEL: All right.

16 THE COURT: -- whether to permit this as -- whether  
17 it's a permissible amendment or not, et cetera. I just haven't  
18 decided what we're doing. That's why I wanted -- and I'll give  
19 you a chan -- I mean, I asked Mr. Lewis to address the claim on  
20 the merits, and that's what I want you to do as well. I think  
21 you've done that.

22 MS. KRIGEL: Okay. And Your Honor, so the only item  
23 that I think I would bring to your attention was that on June  
24 11th of 2013, after Ms. Spence had filed her claim, Morrison &  
25 Foerster did send her a letter that said -- that invited her to

1 provide more information for her wrongful foreclosure as the  
2 basis of her claim. So again, I believe that they understood  
3 that that was the basis of her --

4 THE COURT: Well, they did that because it was a -- I  
5 had entered a procedures order with objections to borrower  
6 claims. And special counsel to the creditors' committee, who  
7 happens to be sitting in the back of the courtroom -- that was  
8 part of the procedures with objections to borrower claims;  
9 because so many of them were pro se, there was a notice,  
10 essentially, a letter that would go to the borrowers, basically  
11 asking them for more information.

12 MS. KRIGEL: Yes.

13 THE COURT: And because I didn't want to be ruling on  
14 borrower's claims without sufficient information in front of  
15 me. That was -- that's essentially why it was agreed that that  
16 procedure would be adopted.

17 MS. KRIGEL: And that is why, Your Honor, Ms. Spence  
18 did attempt on or her own, pro se, to provide that information.  
19 And it, again, was not for the purpose of amending or changing  
20 her claim but just to flesh out and provide debtors' counsel  
21 and the Court with additional information.

22 THE COURT: What would be helpful if you would  
23 address, Ms. Krigel, and I'd ask Mr. Lewis about this at the  
24 end, I'm not sure what breach of contract you're saying there  
25 was. You also seem to be alleging tortious interference with

1 contract. It's unclear to me what contract you're talking  
2 about, what the terms of it are. The papers talk about receipt  
3 of a payment from Elegant, and it all seemed quite iffy to me.  
4 So what contract do you say was breached? What contract do you  
5 say was tortiously interfered with?

6 MS. KRIGEL: The contracts that were tortiously  
7 interfered with were her leases with her tenants because those  
8 provided for the tenants to pay her the rent. And they were,  
9 in fact, paying her the rent until the representatives of  
10 Homecomings approached the tenants and orally told them to stop  
11 paying.

12 And it's our position that because the attempt at  
13 making an assignment of rents claim was improper and because  
14 later the foreclosures were improperly performed, that those  
15 created not only a breach of contract for the deeds of trusts  
16 and contract that she had with Homecomings but created a breach  
17 of -- a tortious interference with her contract rights with her  
18 tenants.

19 THE COURT: All right. So that's what you're talking  
20 about; you're talking about the leases that she had with  
21 tenants in the building?

22 MS. KRIGEL: Yes, Your Honor.

23 THE COURT: Okay. Would you -- you agree that Ms.  
24 Spence was in default, correct?

25 MS. KRIGEL: Yes, Your Honor.



1 THE COURT: And I take it you would agree that  
2 Homecomings, if they had given written notice to the tenants  
3 with the particulars that you say they had to do, that that  
4 would have authorized them to direct the tenants to stop paying  
5 Ms. Spence, correct?

6 MS. KRIGEL: That is correct, Your Honor.

7 THE COURT: Okay. And so your argument relates to it  
8 was done orally instead of in writing, it was -- they didn't  
9 tell the tenants where to send the money, and for that reason  
10 you think they didn't trigger possession that was necessary for  
11 the assignment of rents, that's your position?

12 MS. KRIGEL: That is correct, Your Honor.

13 THE COURT: Okay. Wouldn't you agree that Ms. Spence  
14 had no right to continue to collect the rent if Homecomings, in  
15 fact, did trigger the assignment of rents?

16 MS. KRIGEL: If they had properly triggered it then  
17 that is correct, she would not have had the right to collect  
18 the rents.

19 THE COURT: Okay.

20 MS. KRIGEL: But she could have had the expectation  
21 that the rents were being paid to the lender, and that the  
22 lender would then apply those payments to her mortgage.

23 THE COURT: Was she -- did the property sell for less  
24 than the secured debt, or was she under water?

25 MS. KRIGEL: I believe that they did sell for less.

1 And I don't -- and in Missouri when a lender forecloses, they  
2 have, essentially, free reign to bid in almost any number.  
3 Missouri law says that in order to set aside a foreclosure sale  
4 the sale price has to shock the conscience of the community.  
5 And courts have held that as low as twenty percent does not  
6 shock the conscience. So --

7 THE COURT: Under Missouri law where there's  
8 nonjudicial foreclosure, is the lender entitled to a deficiency  
9 claim against the borrower?

10 MS. KRIGEL: Yes.

11 THE COURT: I don't know this may have been  
12 nonrecourse loans, but in many states where there's nonjudicial  
13 foreclosure, if a lender pursues it they can't seek a  
14 deficiency.

15 MS. KRIGEL: No. No, Your Honor. In Missouri there  
16 is a right to pursue a deficiency.

17 THE COURT: And did Homecomings pursue a deficiency  
18 against Ms. Spence?

19 MS. KRIGEL: I don't believe so, Your Honor, because,  
20 in part, she had filed a Chapter 11 later in 2008, and I -- and  
21 named them as a creditor in that proceeding.

22 THE COURT: Okay.

23 MS. KRIGEL: That was not the Chapter 11 that I'm  
24 involved with. That one was dismissed, and a second one was  
25 filed, and I'm counsel on that second Chapter 11.

1 THE COURT: So would you agree if the property had  
2 sold for less than the secured debt that Ms. Spence was not  
3 harmed by not receiving the rents, because the rents would have  
4 gone to the mortgagee and not to Ms. Spence?

5 MS. KRIGEL: I wouldn't agree with that, respectfully,  
6 Your Honor, because I believe that she was cash flowing, and  
7 that the rents were actually in excess of the mortgage amount.  
8 And therefore, had they been collecting the rents it could have  
9 been enough to help or move forward to reinstate those loans.

10 THE COURT: How much were the -- do you know -- I  
11 don't know, there were six properties, but do you know how much  
12 the arrears were on each property at the time the foreclosures  
13 took place?

14 MS. KRIGEL: Yes, Your Honor, I think, again, attached  
15 as part of her supplemental response, it appears that they were  
16 somewhere between 6 and 9,000 per property.

17 THE COURT: Okay. All right. Anything else you want  
18 to add, Ms. Krigel?

19 MS. KRIGEL: No, Your Honor.

20 THE COURT: Mr. Lewis.

21 MR. LEWIS: Thank you, Your Honor. Just a few things.

22 First of all, to get to the issue you have just been  
23 discussing, the rents, it's worth remembering that Ms. Spence,  
24 in her supplemental reply, said she would have used the rents  
25 to pay for maintenance. Now we're hearing she would have used

1 it to try to shorten up her shortfall. That's a totally  
2 different story, and we have no evidence that it would have  
3 been successful anyhow. So once again, I don't think there's  
4 been any harm even if the rents are an issue.

5 I don't think the rents are an issue because, first of  
6 all, as the Court notes, Northwest doesn't say that a notice  
7 has to be in writing. It was --

8 THE COURT: It doesn't say it doesn't either.

9 MR. LEWIS: No, but it was; it doesn't address the  
10 issue at all.

11 And then, secondly, the key issue for exercising  
12 control over rents and profits clause is control. And we were  
13 exercising control of what to do with that money.

14 THE COURT: Maybe you were, maybe you weren't; I have  
15 to decide that.

16 MR. LEWIS: Okay. Well, I understand that. I'm just  
17 sort of tossing in my arguments for your consideration here.

18 THE COURT: Here's what I -- I think I -- I'm going to  
19 take the matter under submission. But, Ms. Krigel, I'm going  
20 to give you until next Wednesday to produce the writing that  
21 you say exists in paragraph 14 of your supplemental response.

22 MS. KRIGEL: All right.

23 THE COURT: If no such writing exists, please state  
24 that clearly, okay.

25 MS. KRIGEL: All right.

1 THE COURT: And file a copy as part of a pleading on  
2 ECF, and that way the debtor will get it as well.

3 Mr. Lewis, I want to see the servicing notice.

4 MR. LEWIS: I was just going to suggest, Your Honor,  
5 we'll take another scrub at that.

6 THE COURT: And I know that it exists. So I want the  
7 servicing notes for these properties, and attach them to a  
8 document on ECF so that Ms. Krigel has them as well. I'm going  
9 to take the matter under submission. Is it possible to get  
10 those by next Wednesday as well?

11 MR. LEWIS: The servicing notes?

12 THE COURT: Yes.

13 MR. LEWIS: Oh, sure.

14 THE COURT: Okay. All right. So both these -- one  
15 from each side, I want to see the stuff by next Wednesday, and  
16 I'll reserve decision. It will be submitted after I receive  
17 those documents.

18 MR. LEWIS: Your Honor, may I just make a comment on  
19 Graham?

20 THE COURT: Go ahead.

21 MR. LEWIS: In Graham --

22 THE COURT: I didn't read Graham.

23 MR. LEWIS: I understand. So --

24 THE COURT: I'll go back and read Graham.

25 MR. LEWIS: I'll call your attention to this and then

1 you'll see it for yourself.

2 THE COURT: Okay.

3 MR. LEWIS: In Graham, the court says that what  
4 happened has to have been so fundamental as to affect the  
5 meaning of the process, essentially. And in Graham what  
6 happened was the publication -- the initial publication had the  
7 wrong property description in it; it didn't relate to the  
8 property that was at issue.

9 We're nothing like that here. Once again, we have a  
10 situation where you have potential continuity of notice of the  
11 sale dates if you show up at the sales.

12 THE COURT: Potential. Mr. Lewis, do you know who  
13 owns the property at this time?

14 MR. LEWIS: I don't, Your Honor.

15 THE COURT: Did Homecomings buy it at the foreclosure  
16 sales?

17 MR. LEWIS: That I don't know either, but I'll find  
18 out for the Court.

19 THE COURT: Okay. I'd like to know because this --  
20 and Ms. Krigel, do you know what happened to the properties?

21 MS. KRIGEL: Yes, Your Honor. According to the  
22 trustee's deeds, it looks like Deutsche purchased them and it  
23 shows the purchaser as Deutsche in care of Countrywide.

24 THE COURT: Yeah, but I don't know who owns them  
25 today. I mean --

1 MS. KRIGEL: Oh, I don't know who owns them today, no.

2 MR. LEWIS: I don't know that we know, but we will do  
3 what we can to find out.

4 THE COURT: All right. That might take a little  
5 longer to figure out.

6 MR. LEWIS: We'll try to do it by Wednesday, but we'll  
7 see what they can come up with.

8 THE COURT: I'll give you till next -- I'll give both  
9 of you till a week from tomorrow, Friday, give you a couple of  
10 extra days. This may be a little more complicated to figure  
11 out.

12 But where this goes, I mean, look, if -- I assume that  
13 these mortgages were in a securitization trust with Deutsche  
14 Bank as the trustee; that's what it sounds like to me. I can't  
15 imagine they want to inventory this property very long, and I  
16 suspect it's been sold -- this is a total surmise on my part --  
17 been sold -- property's been sold. I don't know who owns it  
18 now.

19 And, certainly, in terms of -- if I were to determine  
20 that a claim has been stated and subsequent proceedings had to  
21 be held, this might go to whether the only remedy is a damage  
22 remedy or -- I don't -- to be quite honest, don't see myself  
23 canceling a deed if this property's been transferred to a good-  
24 faith purchaser for value downstream of Deutsche Bank. But  
25 that's all surmised. I don't know what I'm going to do yet,

1 but --

2 MR. LEWIS: Your Honor, if we can't figure out by next  
3 Friday --

4 THE COURT: At least give me a status letter.

5 MR. LEWIS: I was going to ask, we could, of course,  
6 on those properties ask for title reports, preliminary reports.

7 THE COURT: Let's hold off on doing that.

8 MR. LEWIS: Okay.

9 THE COURT: Okay. Because if -- and I don't know what  
10 I'm going to do, but if I conclude this is a contested matter,  
11 what we're going to do is we're going to have a telephone  
12 status conference to come up with a schedule, and the remedy  
13 doesn't have to be decided before that schedule. But I  
14 still -- I'm mulling this.

15 I've read all these papers, and I've read some of  
16 these cases as well. I've got a few more cases that I need to  
17 read. And obviously I have to decide whether this is a  
18 permissible amendment of a claim or not. That's I think a  
19 threshold issue, because most of these arguments were not  
20 raised in the first instance, but this was a pro se borrower's  
21 claim that was filed.

22 So anything else? Ms. Krigel, anything you want to  
23 add?

24 MS. KRIGEL: No, Your Honor.

25 THE COURT: Okay.



1 MS. KRIGEL: Thank you very much for giving us the  
2 opportunity to speak --

3 THE COURT: Okay.

4 MS. KRIGEL: -- on this.

5 THE COURT: Okay. Mr. Lewis?

6 MR. LEWIS: No, Your Honor. Thank you very much.

7 THE COURT: The only other thing I would say, Ms.  
8 Krigel --

9 MS. KRIGEL: Yes.

10 THE COURT: -- if we wind up having -- if this is a  
11 contested manner and I wind up having an evidentiary hearing,  
12 you can't do it by telephone.

13 MS. KRIGEL: We understand.

14 THE COURT: Okay. We'll work out the procedures, but  
15 everybody needs to understand evidentiary hearings happen in my  
16 courtroom with everybody here.

17 MS. KRIGEL: Okay.

18 MR. LEWIS: I take it the Court does not ride circuit  
19 in Missouri.

20 THE COURT: I don't ride circuit in Missouri, no. I  
21 know some good bankruptcy judges in Missouri; maybe they'd want  
22 to get involved.

23 MR. LEWIS: I know some great barbecue places, too.

24 MS. KRIGEL: Absolutely, we'd welcome mediation, and  
25 I'm sure they would assist.

1 THE COURT: Barry Schermer, in fact, served as a  
2 mediator in one of my cases, and did a great job of getting it  
3 settled. So I don't know what part of Missouri you're in.

4 MS. KRIGEL: I'm actually on the western side.

5 THE COURT: Okay.

6 MS. KRIGEL: Judge Federman.

7 THE COURT: Who is an excellent judge; Judge Federman,  
8 he's an excellent judge.

9 MS. KRIGEL: He is. Absolutely.

10 THE COURT: You've got good judges in Missouri.

11 MS. KRIGEL: We do, we have great judges.

12 THE COURT: Okay.

13 MS. KRIGEL: And we appreciate your allowing us to  
14 speak on this case.

15 THE COURT: Okay.

16 MS. KRIGEL: And we'll provide you with the additional  
17 information.

18 THE COURT: Thank you very much, Ms. Krigel.

19 MS. KRIGEL: All right. Thank you, Your Honor.

20 THE COURT: Thank you, Mr. Lewis.

21 MR. LEWIS: Thank you, Your Honor.

22 THE COURT: Mr. Rosenbaum, we have anything else?

23 MR. ROSENBAUM: There's an adversary status  
24 conference, Your Honor.

25 THE COURT: Okay. Let's move on to it.

1 MR. ROSENBAUM: And it's the last matter on the  
2 agenda, page 6, Roman numeral IV; it relates to Wilson v.  
3 Residential Capital, it's adversary number 12-1936. I believe  
4 Ms. Wilson is appearing pro se, had made a telephonic  
5 appearance, Your Honor.

6 THE COURT: Ms. Wilson, are you on the phone?

7 MS. WILSON: Yes. By special appearance, Jennifer  
8 Wilson, is present.

9 THE COURT: All right. Thank you very much. Mr.  
10 Rosenbaum, where are we on this case?

11 And I'll give you a chance to speak after Mr.  
12 Rosenbaum speaks. Okay?

13 Go ahead, Mr. Rosenbaum.

14 MR. ROSENBAUM: Your Honor, the complaint was filed in  
15 November of 2012, November 9th, 2012, to be exact. Your Honor,  
16 we did -- the complaint relates to a foreclosure of properties  
17 in North Carolina that was completed -- commenced in 2009 and  
18 completed in 2010. I think it best describes North Carolina  
19 has a quasi nonjudicial foreclosure, but it does require a  
20 court order.

21 THE COURT: Make sure you're speaking into the  
22 microphone, so she can hear you.

23 MR. ROSENBAUM: Sure, am I --

24 THE COURT: Go ahead.

25 MR. ROSENBAUM: We filed a -- the debtors filed a

1 motion to dismiss in February of 2013. Ms. Wilson responded.  
2 And then shortly after that, I believe in April, we instituted  
3 the supplemental procedures on behalf of the debtors. We did  
4 engage in settlement negotiations with Ms. Wilson for quite  
5 some time. Unfortunately, we were able to consummate the  
6 settlement.

7 I would note that although Ms. Wilson did file this  
8 adversary proceeding in which she seeks apparently equitable  
9 relief as well as damages, she has not filed a proof of claim.  
10 We did raise that issue in our briefing. And to the best of my  
11 knowledge Mrs. Wilson has taken -- excuse me, Ms. Wilson has  
12 taken no action with respect to that.

13 In light of the institution of the supplemental  
14 proceedings we did not -- that put a moratorium on future  
15 filings, we didn't respond to the -- we didn't submit our  
16 surreply to her response to the motion to dismiss.

17 That's where we are, Your Honor. We'd like to proceed  
18 with the motion to dismiss.

19 THE COURT: All right. Ms. Wilson, let me hear from  
20 you.

21 MS. WILSON: Yes. My understanding is that today we  
22 would be setting a date for them to respond to the reply to  
23 that motion to dismiss. But before we go further, I would like  
24 to object to any pre-trial dates wherein an Article 3 judge of  
25 the District Court would not be presiding over any dispositive

1 decisions, because this is a noncore proceeding, and this is an  
2 ongoing objection.

3 THE COURT: We're moving forward. Your remedy, if you  
4 think you're entitled to it, is to make a motion to withdraw  
5 the reference. As long as the case is before me, this case  
6 moves forward.

7 Mr. Rosenbaum, when are you going to be prepared to  
8 file your --

9 MR. ROSENBAUM: Your Honor, given the time that's  
10 gone, if we could schedule that for the first week in March.

11 THE COURT: Okay. What's the date of the Friday of  
12 the first week in March? Does somebody have a calendar? Thank  
13 you. 7th, March 7th, Friday March 7th at noon. Okay.

14 MR. ROSENBAUM: Thank you, Your Honor.

15 THE COURT: And after I receive all the papers, I will  
16 schedule -- we'll schedule an argument -- I'll have -- I'll  
17 permit Ms. Wilson to appear by telephone for the argument; I'm  
18 usually not a big fan of doing that, but she's pro se and --  
19 you're in North Carolina, Ms. Wilson, is that -- am I correct?

20 MS. WILSON: Yes, I am.

21 THE COURT: Okay. So you don't have -- are you a  
22 lawyer?

23 MS. WILSON: I am not.

24 THE COURT: Okay. I'll permit you to appear and argue  
25 by telephone.

1           After I get the papers, we'll be in touch with the  
2 Morrison & Foerster firm. And I don't know whether there will  
3 be other omnibus dates when this could be put on but I'll make  
4 sure that somebody talks to you to make sure that the date  
5 works for you. It doesn't have to be an omnibus day.

6           Anything else you want to add, Ms. Wilson?

7           MS. WILSON: Not at this time, thank you.

8           THE COURT: Okay. Mr. Rosenbaum, anything you want to  
9 add?

10          MR. ROSENBAUM: No, Your Honor. Thank you. That  
11 concludes our agenda.

12          THE COURT: Okay.

13          MR. ROSENBAUM: And we'll see you on February 20th.

14          THE COURT: All right. We're adjourned. Thank you  
15 very much.

16          MR. ROSENBAUM: Thank you.

17          THE COURT: Thank you, Ms. Wilson.

18          (Whereupon these proceedings were concluded at 11:10 AM)

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

*Sharona Shapiro*

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SHARONA SHAPIRO

AAERT Certified Electronic Transcriber CET\*\*D-492

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Date: February 7, 2014